

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHARLES F. CARDONE,

Petitioner,

v.

Civ. Act. No. 06-127-KAJ

THOMAS L. CARROLL,

Warden, and **CARL C. DANBERG,**

Attorney General for the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Charles F. Cardone, has applied for federal habeas relief, challenging his March 2005 conviction in Delaware Superior Court of aggravated menacing, resisting arrest, and third degree criminal trespassing. D.I. 1. By the terms of the Court's order, the answer is due to be filed on May 18, 2006.

2. Counsel for respondents is currently actively involved in last minute capital litigation regarding an execution scheduled for May 19. Counsel also has been, and continues to be, working on other cases before this Court, the Third Circuit, and the state courts. Moreover, the two attorney vacancies in the Appeals Division have meant an increased workload overall. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of

time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including June 30, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: May 8, 2006

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: May 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2006, I electronically filed a motion for extension of time and attachments with the Clerk of Court using CM/ECF. I also hereby certify that on May 8, 2006, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Charles F. Cardone
SBI No. 098159
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759
elizabeth.mcfarlan@state.de.us

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Civ. Act. No. 06-127-KAJ

ORDER

This ____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before June 30, 2006.

United States District Judge